* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : July 5, 2007
Pronounced on : July 9, 2007

\+ CRL.REV.P.508/2003

MOHAN LAL BAJORIA .....Petitioner
Through Mr. Sanjay K. Shandilya, Advocate

versus

C.B.I. .....Respondent
Through Mr. R.M. Tewari, Advocate

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? yes

2. To be referred to the Reporter or not? yes

3. Whether the judgment should be reported in the Digest? yes

Mr. Justice S. Ravindra Bhat

1. By this revision petition under Section 397 Cr.P.C. an order dated 19.2.2003 by which the petitioner and other co-accused were charged with having committed offences under Sections 120-B r/w 420/468/471 IPC as well as Sections 5(2) and 5(1)(d) of the Prevention of Corruption Act, 1947, has been challenged.

2. According to the prosecution, Accused No.1 Tadar Tang, (A-1) who subsequently died, during the proceedings, was Minister of Civil Supply and Transport, Government of Arunachal Pradesh at the relevant time in 1978. He, in

alleged conspiracy with the Accused No.2, (A-2) proprietor of M/s. Capital Agency and Accused No.3, (A-3) proprietor of M/s. Kameng Enterprises, Bomdila, Arunachal Pradesh manipulated a situation whereby, the then Central Civil Supplies Minister was induced to allot 500 tonnes each of refined Rapeseed Oil and RBD Palm Oil for public distribution in Arunachal Pradesh. According to the prosecution, no such requirement existed in the State at that time.

3. According to the charge sheet, A-1 allegedly arrived in New Delhi and without informing the Chief Secretary of the State secured allotment of quantities of oil in favour of the two concerns, namely, M/s. Capital Agency and M/s. Kameng Enterprises. He, thereafter, issued an authority letter, addressed to the Branch Manager, State Trading Corporation (STC) Calcutta, on the letter head of M/s. Kameng Enterprises. By this letter dated 4.8.1980 Prahlad Rai (A-5) was constituted agent empowered to sign papers in connection with the delivery, payment, despatch of the consignments of the edible oil allotted to the two firms. A-1 attested various signatures of such agents.

4. So far as the petitioner (A-7), a trader of edible oils of Calcutta is concerned, the prosecution alleged that some co-accused, namely, A-12, A-13 and A-14 obtained delivery of consignment of Repeseed Oil from the godown of STC.

These consignments was allotted pursuant to the request of A-1 and its consequential approval by the Central Government. The petitioner, owner of M/s. Shew Bux Mohan Lal, was a purchaser of such oil. The products were directly transported from the STC godown to his premises.

5. According to the charge sheet, the oil allotted for the purpose of public distribution system in Arunachal Pradesh was purchased by traders such as the petitioner, in Calcutta, was transported from the STC godowns to their shops. For a brief while, the supplies of imported edible oil were suspended w.e.f. 29.10.1980 on allegations of mal-practices. However, they were later resumed on 12.12.1980 because of an assurance by A-1 that the mechanism would be strengthened and such mal-practices would be avoided. It was alleged that the further deliveries made by STC in Calcutta were obtained by A-5, who paid consideration for the purpose. It was alleged that A-5 opened a current account with the Punjab National Bank, in the name and style of M/s. Capital Agency, 30/31, Kalakar Street, Calcutta which were the premises of the petitioner. According to the prosecution, the petitioner introduced him to the bank. Two cheques for refund of some amounts, issued by Sales Tax department were deposited by A-5 in that account. Amounts were allegedly withdrawn from that account by the employees of the petitioner.

6. On the basis of these allegations and the materials which included the depositions of 109 witnesses and other documentary materials, the Special Judge framed charges through the impugned order.

7. Mr. Sanjay K. Shandilya, learned counsel urged that the order on charge is unsupported by any evidence as far as the petitioner is concerned. According to him, no piece of evidence or any material exists, suggestive of the petitioner link's with the alleged mal-practices or offences. Learned counsel contended that the allegation of A-5, having opened the account or M/s. Capital Agency opening an account, and the moneys there being utilized by the petitioner or the account being used by his employees are based on flimsy grounds. He submitted that the evidence on record suggests that the introduction (of A-5 to the bank for account opening) by the petitioner a material circumstance on the basis of which charges have been framed was never acted upon by the concerned branch of the Punjab National Bank. He relied on the statement of PW-44, who had stated that the introduction of A-5 by the petitioner was not accepted. It was also contended that the other allegations about utilization of the moneys from the account by withdrawals made on various dates through other accused such as A-8,A-9,A-11,A-15 and A-19 are the speculative. Counsel submitted that there is nothing to connect the petitioner with those transactions.

8 . Learned counsel had also made some submissions with regard to the prejudice ensuing on account of trial being held in Delhi instead of Calcutta or in Arunachal Pradesh. Learned counsel next submitted that the Special Judge committed an error in holding, as he did in the impugned order, that even if materials existed pointing to suspicion of commission of offences by other persons who were not sent up for trial, the Court could on further examination, during trial, exercise its powers under Section 319 Cr.P.C. It was contended that such an approach, if adopted, would cause immense prejudice as it would prolong a trial which has already been inordinately delayed.

9. Learned counsel for the respondent CBI resisted the petition. He urged that the petitioner was a trader who had arranged funds for clandestine purchase of oil. According to the counsel, the role of the petitioner is prominent, in the acts of fraud. He paid the cash and thus arranged for funds; arranged for Pay orders/demand drafts to facilitate the payment for consideration of the edible oil purchased and diverted for sales in Calcutta and other places. It was contended that several consignments of edible oils were in fact diverted to the godowns of the petitioner. Learned counsel also contended that the bank account opened by M/s. Capital Agency (which was recipient of Sales Tax refund by the STC) showed that

it was the petitioner who utilized them and manipulated those accounts. Learned counsel contended that the other accused who acted at the behest of the petitioner were A-8,A-9 and A-11 who were his employees; they withdrew amounts and also obtained pay orders from the bank accounts in question. All these were done to facilitate the illegal diversion of oil allotted to Arunachal Pradesh and facilitate their sale in Calcutta, at higher rates.

10. The factual matrix leading up to the order on charge as far as the petitioner is concerned is that large quantities of edible oil supposedly required for distribution in Arunachal Pradesh, were diverted. This was allegedly facilitated by A-1, who induced the Central Government to allot those quantities of oil. The product was to be obtained from the STC godowns in Calcutta. A-1 allegedly authorised certain private individuals to act in that regard. Eventually, the petitioner, A-7 in the proceedings and a trader in edible oil in Calcutta, allegedly introduced A-5, who was party to the entire transaction, in the application to open a bank account. According to the charge sheet which is based upon analysis of withdrawals of amount from various accounts of M/s. Capital Agency and M/s. Kameng Enterprises, pay orders were procured and amounts deposited with the aid and assistance of the petitioner's employees, who are also facing trial, namely, A-8,A-9 and A-11.

11. I have considered the materials on record which include the statements of various persons recorded during the investigations, mentioned in the charge sheet. It is apparent that the strong circumstantial link which persuaded the trial undoubtedly was the introduction by the petitioner of A-5, to Punjab National Bank which facilitated the latter's opening a bank account. The account was used to finance the purchase of edible oil. That such introduction was not accepted and someone else had to introduce A-5 is a matter of detail. The fact remains that the petitioner introduced A-5 and even permitted the agency to show his address at his premises at Kalakar Street Calcutta. This circumstantial evidence coupled with the details of the withdrawals made from the accounts and the allegations that such withdrawals were by employees of the petitioner who also allegedly purchased demand drafts/pay orders, raise strong and grave suspicion about his participation in the transaction. In addition, the statement of PW-95, a transporter, in my opinion, bears out the existence of such material and strong suspicion. PW-95 stated during the investigation that according to his books/ ledger, which are part of the record, large quantities of edible oil had been delivered from the STC godowns to the petitioner's premises in 1980.

12. At the time of framing of charges the court is not expected to undertake a

detailed and meticulous examination of the evidence or its quality. If there is sufficient material linking the accused with the incident or incidents which constitute offences punishable under any law and such evidence leads to an inference of grave suspicion about role of that particular accused, the court would be justified in framing charges. The charge framing exercise cannot be equated with a detailed examination of evidence as is done during trial. If such an approach is to be followed, the need to have a trial with detailed cross examination of witnesses and other procedures would be unnecessary. The standard, therefore, is necessarily one where the court had to satisfy itself *prima facie,* about existence of grave suspicion. Whether the prosecution can eventually establish guilt or otherwise of the accused, beyond reasonable doubt is a matter for trial.

13. On an application of the law relating to framing of charges, to the facts of this case, I am of the opinion that the approach of the trial court in considering the charge sheet and the materials and finally charging the petitioner accused as it did, can neither be faulted as procedurally illegal, contrary to law, or unwarranted in the facts of the case. The material on record is sufficient to form *prima facie* grave suspicion about the petitioner's involvement.

14. In view of the above findings, the petition has to fail. It is however clarified

that none of the observations in the judgment shall be construed as an expression on the merits of the case; all defences and contentions of the petitioner, in the course of the trial, are left open. The petition is accordingly dismissed without any orders as to costs.

JULY 09, 2007 **S. RAVINDRA BHAT,J**